

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1052-01
Bill No.: HB 273
Subject: Courts; Health Care Professionals; Hospitals; Liability
Type: Original
Date: February 11, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	\$917,743	\$945,275	\$973,634
Total Estimated Net Effect on General Revenue Fund	\$917,743	\$945,275	\$973,634

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
State Legal Expense	\$0	\$0	\$0
Highway Fund	Unknown	Unknown	Unknown
Total Estimated Net Effect on Other State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Attorney General, Office of Administration – Administrative Hearing Commission, Department of Economic Development – Division of Professional Registration, Department of Labor and Industrial Relations, Department of Public Safety – Missouri State Highway Patrol** and the **Department of Conservation** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Department of Insurance** assume fiscal impact to their department will be minimal. Legislation will have wide-ranging effects upon the professional liability insurance industry in Missouri. It is hard to predict the result of the implementation of this bill and it is unknown if tort reform will considerably reduce medical malpractice premiums. It is also unknown what impact the non-medical tort reforms may have on those lines of insurance.

ASSUMPTION (continued)

Officials from the **Department of Health and Senior Services (DHSS)** assume the legislation would not be expected to significantly impact the operations of the DHSS. If the proposal were to substantially impact any DHSS programs, they would request funding through the legislative process.

Officials from the **Office of Secretary of State (SOS)** assume the proposal modifies various provisions regarding tort actions for personal injury. The proposal could result in the Department of Health and Senior Services promulgating or amending rules. These rules will be published in the *Missouri Register* and the *Code of State Regulations*. Based on experience with other divisions, the rules, regulations, and forms issued by the Committee could require as many as 10 pages in the *Code of State Regulations* and half again as many pages in the *Missouri Register*, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the *Missouri Register* is \$23 and the estimated cost of a page in the *Code of State Regulations* is \$27. Based on these costs, the estimated cost of the proposal is \$615 in FY 04 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Office of Administration – Division of General Services (COA)** assume the changes proposed in Section 106.771, RSMo, reduce the current limits payable under the State Legal Expense Fund for claims or judgments arising from ob/gyn care provided by physicians, without compensation providing services in federally funded community health centers from \$1 million to \$500,000. It also appears to limit payments under all provisions of the State Legal Expense Fund to \$500,000 for any one claimant.

The proposed changes to Section 105.711.2 would have fiscal impact. Over the past five years, COA has paid one claim involving a federally funded community health center. The total claim cost was \$1.3 million. If limited to \$500,000, the savings on the one claim would be \$800,000. Averaged over the five years the savings would be \$160,000 annually.

ASSUMPTION (continued)

The proposed changes to Section 105.711.5 would also have fiscal impact. Over the past 5.5 years, COA has paid on 7 claims (totaling \$7,667,589) that exceeded \$500,000 for any one claimant. The excess over \$500,000 on the 7 claims totals \$4,167,588. This amount averaged over the 5.5 years would constitute a savings of \$757,743 annually.

It should be noted that while the proposed changes to Section 105.711.5 appear to limit payments made under the State Legal Expense Fund to \$500,000 to any one claimant, the state would still be exposed to the liability for a judgment that might exceed \$500,000 such as in federal court. The State Legal Expense Fund would not be available to meet the full obligation of the state that would exceed the \$500,000 limitation.

COA assumes an inflation factor of three percent. COA estimates the fiscal impact of the proposed legislation to be a savings of \$917,743 in FY 04; \$945,275 in FY 05; and \$973,634 in FY 06.

Officials from the **Department of Transportation (MoDOT)** assume the elimination of joint and several liability would be advantageous to Missouri Highways and Transportation Commission (MHTC) because MHTC could no longer be held responsible for the payment of a co-defendant's portion of a judgment. However, an accurate estimate would be impossible to determine as the benefit of these revisions would depend upon the number of cases impacted, the potential liability of MHTC in such cases, and other related. Therefore, MoDOT assumes an unknown savings in each fiscal year to the Highway Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE FUND			
<u>Savings – Office of Administration</u>			
Reduced transfers out to State Legal Expense Fund	<u>\$917,743</u>	<u>\$945,275</u>	<u>\$973,634</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>\$917,743</u>	<u>\$945,275</u>	<u>\$973,634</u>

STATE LEGAL EXPENSE FUND

<u>Savings</u> – Office of Administration	\$917,743	\$945,275	\$973,634
Reduced claims or judgments			

<u>Transfer In</u> – Office of Administration			
Reduced transfers in from General Revenue Fund	(\$917,743)	(\$945,275)	(\$973,634)

ESTIMATED NET EFFECT ON STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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HIGHWAY FUND

<u>Savings</u> – Department of Transportation			
Reduced judgments	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

ESTIMATED NET EFFECT ON HIGHWAY FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

The proposed legislation would make various changes to laws affecting claims for damages for personal injuries. In its main provisions, the bill would:

- (1) Clarify that the maximum liability of the state legal expense fund to any one claimant will be

\$500,000 (Section 105.711, RSMo);

DESCRIPTION (continued)

(2) Repeal and reenact a section ruled unconstitutional which provides for liens for health practitioners who provide medical services to patients injured by tort-feasors (Section 430.225);

(3) Require that venue in all tort actions only be in the county in which the cause of action accrued. If the cause of action did not accrue in Missouri, venue would be determined as if it were not a tort action (Section 508.010);

(4) Allow civil defendants to change venue to an appropriate venue if a new defendant is added which would have made the current venue inappropriate had the later-added defendant been named initially (Section 508.120);

(5) Require clear and convincing evidence that a defendant's actions were willful, wanton, or malicious in order to award punitive damages and allows discovery as to a defendant's assets only after a finding by the court that the plaintiff has a submissible case on punitive damages (Section 510.263);

(6) Provide that an order certifying a class in a class action lawsuit is a final, appealable judgment (Section 512.023);

(7) Provide that in appellate cases involving monetary judgments in excess of \$3 million, a \$3 million supersedeas bond will be sufficient to stay execution, with the remainder of the judgment being an immediate but nonexecutable lien upon the appellant's assets (Section 512.080);

(8) Define "costs" to mean the total of fees, miscellaneous charges, and surcharges (defined in Section 488.010), as well as reasonable charges and fees of endorsed expert witnesses and court reporters and reasonable expenses for travel, record retrieval, photocopying, long distance telephone calls, exhibit preparation, and videotaped depositions (Section 514.035);

(9) Require mediation in all tort actions in which claimed damages exceed \$25,000, unless the court finds that mediation would have no chance of success. The proposal would award costs to the prevailing party, defined as the plaintiff if the plaintiff's net recovery exceeds his or her last position at mediation and defined as the defendant if the plaintiff's net recovery is less than the defendant's last position at mediation. If plaintiff's net recovery is between the parties' last positions at mediation, neither party would prevail nor pay the costs of the other party (Section 514.060);

L.R. No. 1052-01
Bill No. HB 273
Page 7 of 10
February 11, 2003

BLG:LR:OD (12/02)

DESCRIPTION (continued)

(10) Reduce the statute of limitations for claims by minors less than 18 years of age against physicians, hospitals, dentists, etc., from the minor's twentieth birthday to two years from the date of occurrence of the alleged negligence (Section 516.105);

(11) Limit to five years the extension of time to file a cause of action once the disabilities of minority or mental incapacity are removed (Section 516.170);

(12) Eliminate defendants' joint and several liability in tort actions unless a principal-agent relationship exists between the defendants (Section 537.067);

(13) Require an affidavit from a similarly-licensed professional supporting a cause of action for non-medical claims of professional negligence (Section 537.530);

(14) Limit attorneys contingency fees in tort actions to 33% of the first \$500,000, 28% of the next \$500,000, and 15% of all damages recovered in excess of \$1 million (Section 537.767);

(15) Limit attorneys fees in class action lawsuits to 10% of the value of the judgment or settlement "actually collected" by the members of the class (Section 537.768);

(16) Prohibit the Attorney General or any state agency from entering into any contingency fee agreement or any agreement providing any incentive bonus with any attorney regarding any claim relating in any manner to a tort action (Section 537.770);

(17) Add long-term care facilities licensed pursuant to chapter 198 (Convalescent, Nursing and Boarding Homes) to the definition of "health care provider" as used in Chapter 538 (Tort Actions Based on Improper Health Care) (Section 538.205);

(18) Specify that all individuals or entities whose liability is based solely upon an act or omission of an agent, servant, or employee will be considered the same defendant as the agent, servant, or employee and specify that all individuals and entities asserting a wrongful death claim will be considered one plaintiff. The proposal would also eliminate the requirement that the award limitations for noneconomic damages be adjusted annually for inflation and remove the "per occurrence" language in order to overrule a recent Missouri Supreme Court decision (Section 538.210). **There is an emergency clause for this section;**

(19) Limit civil damages recoverable against certain physicians, dentists, hospitals, etc. to \$150,000 for care or assistance necessitated by traumatic injury and rendered in a designated

trauma center (Section 538.213);

DESCRIPTION (continued)

(20) Require that the health care provider affidavit required in medical professional negligence cases include the name and address of the affiant, require that the opinion upon which the affidavit is based be rendered by a physician who has the same board certification as the defendant, and allow an extension of time not to exceed an additional 90 days for filing the affidavit (Section 538.225);

(21) Prohibit statements, writings, or benevolent gestures expressing sympathy from being admissible as evidence of an admission of liability in a civil action (Section 538.226); and

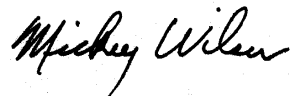
(22) Prohibit certain records, written proceedings, or documents produced by or through the activities of any state or federal agency from being admissible in certain civil, criminal, and administrative proceedings against facilities licensed pursuant to Chapter 198 (Convalescent, Nursing and Boarding Homes) (Section 538.301).

There is an emergency clause for Section 538.210, which clarifies the definition of “defendant” in actions against health care providers and tightens the limitation on noneconomic damage awards.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of Administration
 – Administrative Hearing Commission
 – Division of General Services
Office of State Courts Administrator
Department of Economic Development
Department of Transportation
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Public Safety
 – Missouri State Highway Patrol
Department of Insurance
Department of Conservation
Office of Secretary of State



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